

BEFORE THE INDIAN CLAIMS COMMISSION

PYRAMID LAKE PAIUTE TRIBE OF THE)	
PYRAMID LAKE RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 87-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 23, 1975

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission for approval of a compromise settlement and the entry of a final judgment, in the amount of \$8,000,000, in favor of the Pyramid Lake Paiute Tribe, on its claim for damages suffered as the result of its not having received all of the water to which it was entitled under rights reserved for the Pyramid Lake Indian Reservation. The said "water" claim, which was previously presented in Docket No. 87-A, was separated from all other claims in Docket 87-A and assigned to Docket No. 87-B by order of the Commission entered of even date herewith.

During the course of the proceedings in Docket No. 87-A, two interlocutory decisions were issued by the Commission pertinent to the Pyramid Lake Indian Reservation and the water claim. The first was a decision entered February 16, 1972 (27 Ind. Cl. Comm. 39), and the second was entered April 25, 1973 (30 Ind. Cl. Comm. 210).

Agreement was subsequently reached by the Pyramid Lake Paiute Tribe and the United States on a compromise settlement of the water claim. A hearing having been held before the Commission on July 14, 1975, on the proposed compromise settlement, the Commission makes the following findings of fact:

1. Counsel for the plaintiffs herein submitted to the Department of Justice letters dated January 24 and 31, 1975, relative to a proposed compromise settlement of the Pyramid Lake water claim for a net final judgment of \$8,000,000 in favor of the Pyramid Lake Paiute Tribe, with no review to be sought or appeal taken by either party. The letter of January 31 was accompanied by a draft of a stipulation for entry of final judgment on the water claim. The settlement proposal was conditioned upon the approval of the compromise by the governing body and members of the Pyramid Lake Paiute Tribe and the approval by the Secretary of the Interior or his authorized representative of the compromise settlement and of the tribal resolutions approving the settlement.

2. By letter of March 26, 1975, to counsel for plaintiffs, Assistant Attorney General Wallace H. Johnson transmitted a revised draft stipulation and advised as to the agreement of the Department of Justice to the settlement of the water claim relative to the Pyramid Lake Indian Reservation by a payment by the United States in the amount of \$8,000,000, subject to the following additional conditions:

1. That you accept the enclosed revised draft stipulation.

2. That, in connection with entering final judgment pursuant to the settlement, the Commission shall enter a finding that the Winters doctrine water rights or any other water rights on which the claim for damages for deprivation of water herein are based are the exclusive property of the Pyramid Lake Paiute Tribe of Indians, in which no other tribe or group of Indians, has any right, title or interest.

3. That, while the parties are of the opinion that no water rights reserved to the Pyramid Lake Paiute Tribe have been taken, lost, diminished or subordinated by anything that has happened or been done since the creation of the Pyramid Lake Indian Reservation, the judgment by the Commission pursuant to the settlement shall finally dispose of and bar, up to the date of execution of the stipulation for entry of final judgment, any and all claims that were or might have been asserted in Docket No. 87-A for damages or compensation for loss of water or damage to fisheries and any and all claims for damages or compensation for the loss, taking, subordination or diminution, by acts or omissions of the United States accruing before the date of execution of the stipulation, of water rights that were or may have been reserved in connection with the establishment of the Pyramid Lake Indian Reservation.

4. That, coincident with the filing of the stipulation for entry of final judgment, the plaintiffs shall file with the Commission, and, coincident with the entry of final judgment on the settlement, the Commission shall accept, an amended and supplemental petition in Docket No. 87-A in which plaintiffs shall restate and set forth the remaining claims in Docket No. 87-A, which claims shall expressly exclude any claim for damages or compensation based upon acts or omissions of the United States prior to the date of execution of such stipulation that allegedly resulted in the loss of fish or fisheries, water or water rights reserved to or owned by the Pyramid Lake Indian Reservation.

3. Counsel for the parties signed the stipulation for settlement in final form on March 26, 1975, as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated, agreed and understood by and between the parties, through their attorneys, as follows:

1. One of the claims presented in this case on behalf of the Pyramid Lake Paiute Tribe is for damages suffered as the result of its not having received, since 1859 to the present time, all of the water to which it was entitled under rights reserved for it at the time of establishment in 1859 of the Pyramid Lake Indian Reservation.
2. On behalf of the Pyramid Lake Paiute Tribe, the United States, among other things, is now prosecuting a suit in the United States District Court for the District of Nevada, against the Truckee-Carson Irrigation District and others, to vindicate and confirm such rights.
3. Both the Pyramid Lake Paiute Tribe and the United States are convinced that, as of the date of the establishment of the Pyramid Lake Indian Reservation in 1859, there was reserved for the benefit of the Pyramid Lake Paiute Tribe the rights to sufficient water from the Truckee River for the maintenance of Pyramid Lake, for the maintenance of the lower reaches of the Truckee River as a natural spawning ground for fish, and for other needs of the reservation, such as irrigation and domestic use. Both are convinced that such rights have not been diminished or lost by anything that has happened or been done from the time of establishment of the reservation to the present.
4. The Pyramid Lake Paiute Tribe sued here solely for damages suffered by reason of not having received all of the water to which it was entitled under such rights, which it contends were reserved for its benefit in 1859, and are reserved for its benefit today. Specifically, the Pyramid Lake Paiute Tribe did not sue here for damages or compensation for the loss, diminution or taking of any such reserved

water rights, but only for damages sustained by reason of not having received all of the water to which it was and is entitled under such rights, and no part of the award of damages to be entered pursuant to this stipulation represents damages or compensation for the loss, diminution or taking of any water rights.

5. The claim in this case, Docket No. 87-A, prosecuted on behalf of the Pyramid Lake Paiute Tribe for damages suffered by reason of its not having received all of the water to which it was entitled under such rights, which claim was the subject of the decision of the Commission entered on April 25, 1973 (30 Ind. Cl. Comm. 210), and which had been scheduled for trial before the Commission on January 27, 1975, shall be separated from all other claims in this case and shall be assigned to a new case, to be designated Docket No. 87-B.

6. Simultaneously, the plaintiffs, Northern Paiute Nation, et al., shall file with the Commission an amended petition in Docket No. 87-A, which shall expressly set forth all claims remaining in this docket. Any claim not expressly set forth in the amended petition shall be forever barred by this settlement. Such amended petition shall be accepted by the Indian Claims Commission as setting forth all remaining claims in Docket No. 87-A, which claims shall expressly exclude any claims for damages or compensation based upon acts of[sic] omissions of the United States prior to the date of execution of such stipulation that allegedly resulted in the loss of fish or fisheries, water or water rights reserved to the Pyramid Lake Indian Reservation.

7. All claims which were or could have been set forth in Docket No. 87-A, except as specifically reserved in the amended petition referred to in paragraph 6, above, shall be compromised and settled by the entry of final judgment by the Indian Claims Commission in Docket No. 87-B in the amount of \$8,000,000 in favor of the Pyramid Lake Paiute Tribe. No review shall be sought of or appeal taken from such final judgment, and the United States shall waive any and all claims or demands for offsets or gratuities against the Pyramid Lake Paiute Tribe to date of execution of this stipulation.

8. The Pyramid Lake Paiute Tribe shall accept such award of \$8,000,000 in full satisfaction and settlement of all damages sustained by it to date of execution hereof by reason of its having been deprived of water to which it was entitled under rights reserved for the Pyramid Lake Indian Reservation.

9. Although, as stated, both the Pyramid Lake Paiute Tribe and the United States are of the view that no water rights reserved for the Pyramid Lake Indian Reservation have been lost, diminished or taken by reason of anything that has happened or been done between 1859 and the present, and although the award of \$8,000,000 to be entered pursuant to this stipulation is strictly for damages sustained by the tribe by reason of its not having received all of the water to which it was entitled under such rights, the tribe covenants, should it be finally judicially determined that, by reason of acts or omissions of the United States done or occurring prior to the date of execution hereof, water rights once reserved for the Pyramid Lake Indian Reservation were lost, taken, subordinated to other rights, or otherwise diminished, that it will not again sue the United States to recover additional damages or sue for compensation for the loss, taking, subordination or diminution of such water rights. This covenant shall not extend to acts or omissions of the United States done or occurring after the execution of this stipulation that result in depriving the reservation of water to which it is entitled under such rights as it then shall have, or that result in losses, takings, subordinations or diminutions of such rights.

Dated this 26th day of March, 1975.

/s/ Wallace H. Johnson
Wallace H. Johnson
Assistant Attorney General
Department of Justice

/s/ A Donald Mileur
A. Donald Mileur
Chief, Indian Claims Section
Department of Justice

/s/ Marvin E. Schneck
Marvin E. Schneck
Attorney for Defendant
Department of Justice

/s/ Abe W. Weissbrodt
Weissbrodt & Weissbrodt
Attorneys for the Plaintiffs
Docket No. 87-A

4. The proposed settlement was presented for the consideration and vote by the members of the Pyramid Lake Paiute Tribe at a meeting held on the Pyramid Lake Reservation, at Nixon, Nevada, on May 17, 1975. This general membership meeting was called and held pursuant to a notice which was issued by Allen Aleck, Chairman of the Pyramid Lake Paiute Tribal Council.

5. A copy of the notice of the general meeting to be held on May 17, 1975, was received in evidence as part of Exhibit S-4. The notice specified the place, date and hour of the meeting and stated that the purpose of the meeting was to consider and vote upon a proposed settlement of the water claim of the Pyramid Lake Paiute Tribe in Docket 87-A, which settlement provided for the payment by the United States to the Tribe of the sum of \$8,000,000. In addition, other steps were taken to publicize the calling of the meeting, including the posting of the notice at the post office and local store on the reservation (Exhibit S-5) and publication in certain newspapers (Exhibits S-7 and S-8).

6. Also received in evidence as part of Exhibit S-4 was a certification of Carol Wadsworth, Secretary of the Pyramid Lake Paiute

Tribal Council, that prior to May 1, 1975, she supervised and caused to be mailed a copy of the notice to all members of the Pyramid Lake Paiute Tribe who were of voting age, as shown on the records and membership lists of the Tribe.

7. At the general meeting votes were cast by 159 persons. The result of this vote was 158 in favor of a resolution approving the proposed settlement and 1 opposed. A copy of the minutes of the meeting and a certified copy of the resolution approving the settlement were received in evidence as Exhibit S-1. Prior to voting at the meeting, the terms of the proposed settlement were carefully explained. Copies of the exchange of letters (Exhibits S-9, S-10 and S-11) between the claims attorneys for the Tribe and the attorneys for the Department of Justice relative to the proposed settlement, as well as copies of the Stipulation for Entry of Final Judgment executed by the attorneys were presented at the meeting. Also, copies of a written report by the Tribe's attorneys (Exhibit S-12) were distributed at the meeting. This report was also read aloud in full at the meeting. The report described the terms of the proposed settlement and set forth the recommendations of the attorneys. Those attending the meeting were afforded the opportunity to request further information and to ask questions and all requested information was supplied and all questions were answered.

8. After the adjournment of the general meeting, a meeting of the Pyramid Lake Paiute Tribal Council, the governing body of the Tribe, was held on the same day. At this meeting a resolution approving

the settlement was adopted by the Tribal Council by a vote of 8 for and 0 against. Certified copies of the resolution and the minutes of the meeting were received in evidence as Exhibit S-2.

9. A representative of the Bureau of Indian Affairs was present at the general meeting and the meeting of the Tribal Council. On the basis of the report submitted by the representative of the Bureau as well as information on the merits of the proposed settlement supplied to the Bureau by the attorneys for the Indians, the Department of the Interior approved the settlement by letter dated June 20, 1975, addressed to the law firm of Weissbrodt & Weissbrodt, claims attorneys for the Tribe, as follows (Exhibit S-3):

You requested our approval of a proposed compromise to settle the "water claim" of the Pyramid Lake Paiute Tribe, before the Indian Claims Commission in Docket No. 87-A, for a final net judgment of \$8,000,000.00 in favor of the Pyramid Lake Paiute Tribe of Indians.

The subject water claim is being prosecuted under contract, Symbol 14-20-0450 No. 4883, dated June 14, 1964, between the Pyramid Lake Paiute Tribe and your law firm and Associated Attorneys Jay H. Hoag and Rodney J. Edwards. An extension of the contract until June 13, 1975, was approved on January 19, 1973.

Briefly, the claim is for damages resulting from diversion of waters of the Truckee River causing a lowering of the water in Pyramid Lake which resulted in loss of fish, impairment of fishing and related activities, and erosion of lands within the Pyramid Lake Reservation. Acceptance of the \$8,000,000.00 would constitute final settlement for damages sustained by the Pyramid Lake Paiute Tribe up to the date of the signing of the stipulation, by reason of having been deprived of water to which the tribe was entitled under rights reserved under the law for the Pyramid Lake Indian

Reservation. The terms of the proposed settlement are set out in the Stipulation For Entry of Final Judgment dated March 26, 1975, that was executed by the parties.

It is understood that the tribe's "water claim" that is the subject of the proposed settlement will be placed in a separate docket to be designated No. 87-B and that you will file an amended petition in No. 87-A excluding therefrom the claims settled by the proposed compromise settlement.

Your offer to settle the "water claim" for \$8,000,000.00 was made by letters addressed to the Assistant Attorney General on January 24 and 31, 1975. The Assistant Attorney General accepted your offer on March 26, 1975, with conditions. Two of the conditions were that the proposed settlement, as well as the resolution of the tribe, be approved by Secretary of the Interior or his authorized representative.

You took the terms of the proposed settlement to the Indians of the Pyramid Lake Paiute Tribe on May 17, 1975. A representative of the Bureau of Indian Affairs was present and reported on the meeting.

The chairman of the Tribal Council of the Pyramid Lake Paiute Tribe certified that notices of the general meeting of members of the Pyramid Lake Paiute Tribe to be held on the Pyramid Lake Indian Reservation in the Gymnasium in Nixon, Nevada, on May 17, 1975, to consider acceptance or rejection of the proposed settlement, were mailed prior to May 1, 1975, to all members of voting age at their last known addresses. Also, copies of the notice were posted in Abe and Sue's Store in Nixon and in the Post Office in Nixon. The notice also appeared in newspapers of general circulation within the area.

At the meeting, you gave to the members a copy of a report that you had prepared explaining the claim and the terms of the settlement. This report was read aloud at the meeting. A full explanation was

made orally by Claims Attorney I. S. Weissbrodt. Members of the tribe asked questions and all were answered. After the discussion period and the question and answer session ended, all persons who claimed to be eligible voting members of the tribe were given the opportunity to cast a ballot on acceptance or rejection of the proposed settlement. The balloting resulted in adoption of a resolution by a vote of 158 for and 1 against accepting the proposed settlement. Minutes of the meeting were recorded and they also reflect the conduct of the meeting and the results of the casting of ballots. The resolution and minutes were signed by the Chairman and Secretary of the Tribal Council of the Pyramid Lake Paiute Tribe. Their signatures were certified to be genuine.

The Tribal Council of the Pyramid Lake Paiute Tribe also met on May 17, 1975, after the general meeting had ended. The Council considered the proposed settlement and accepted it by Resolution No. P.L. 25-75, adopted by a vote of 8 for and 0 against. The resolution reflected the views of the members who voted at the general meeting. The resolution was signed by the Chairman and Secretary. Their signatures were certified as genuine.

We are satisfied that the general meeting held on May 17, 1975, was well publicized and that the adult voting members had an opportunity to attend. The meeting was satisfactorily conducted with the balloting conducted after the members had the opportunity to consider the proposed compromise. The meeting of the Tribal Council of the Pyramid Lake Paiute Tribe was also satisfactorily called and conducted with Resolution No. P.L. 25-75 being duly adopted in the usual manner. Both resolutions reflect the position of the members who voted and the results reflect the views of the tribal membership. Both resolutions are hereby approved.

In light of the information which you have furnished to us, that which has been submitted by our field offices, and that obtained from other sources, we are satisfied that the proposed settlement of the

"water claim" as set forth in the Stipulation For Entry of Final Judgment dated March 26, 1975, is fair and just. The proposed settlement is hereby approved.

Sincerely yours,

/s/ Morris Thompson

Commissioner of Indian Affairs

10. At the hearing before the Commission on the proposed settlement, held on July 14, 1975, Allen Aleck, Chairman of the Pyramid Lake Paiute Tribal Council and Roy Garcia, member of the Council, appeared and were sworn as witnesses. They testified concerning their understanding of the settlement, the procedure and conduct of the general meeting and the meeting of the Tribal Council and the votes taken at the meetings. This testimony established that reasonable and adequate steps were taken to give ample advance notice of the general meeting to the members of the Pyramid Lake Paiute Tribe and the members of the Tribal Council; that sufficient explanations were given and sufficient discussion took place at the meetings so as to assure that the members of the Tribe and of the Tribal Council understood the proposed settlement before they voted; and that the general meeting and the meeting of the Tribal Council were conducted properly and fairly.

At the hearing counsel for all the plaintiff tribes and groups in Docket 87-A stated that during April 1975, copies of the amended and supplemental petition filed under Docket 87-A on July 2, 1975, were distributed to all said tribes and groups. The details of the proposed settlement of the Pyramid Lake Paiute water claim and of the continuing

prosecution of all other claims under Docket 87-A were explained to said tribes and groups. Counsel further stated that none have objected to these arrangements.

11. By its interlocutory decision of February 16, 1972, entered in Docket No. 87-A (27 Ind. Cl. Comm. 39), the Commission determined that the Pyramid Lake Reservation was established on November 29, 1859. By its interlocutory decision of April 25, 1973, entered in Docket No. 87-A (30 Ind. Cl. Comm. 210), the Commission determined that by reason of the application of the Winters doctrine, implicit in the creation of the Pyramid Lake Reservation was the reservation of sufficient water from the Truckee River for the maintenance of Pyramid Lake, for the maintenance of the lower reaches of the Truckee River as a natural spawning ground for fish and for the other needs of the inhabitants of the reservation, such as irrigation and domestic use. The Commission further determined that an obligation on the defendant was thereby established with regard to the preservation of the Pyramid Lake waters and fisheries.

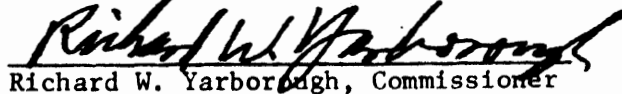
12. Following the establishment of the Pyramid Lake Reservation, the Indian inhabitants thereof became known as Pyramid Lake Paiute Indians and were organized as the Pyramid Lake Paiute Tribe. The water rights on which the claim of the Pyramid Lake Paiute Tribe for damages for deprivation of water is made in this case are the exclusive property of the Pyramid Lake Paiute Tribe, in which no other tribe or group of Indians has any right, title or interest.

13. The Commission finds, based upon the testimony of the witnesses, the record at all stages of the litigation, the representations of counsel, and all other pertinent factors before us, that the proposed compromise settlement of the Pyramid Lake water claim is fair to the parties and has been freely entered into by the Pyramid Lake Paiute Tribe and duly approved by the Commissioner of Indian Affairs.


The Commission has entered an order in Docket No. 87-A, separating the Pyramid Lake water claim from other claims in that docket and assigning the water claim to Docket No. 87-B. The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in Docket No. 87-B in favor of the plaintiff, the Pyramid Lake Paiute Tribe, in the amount of \$8,000,000.00, subject to the terms and provisions set forth in the Stipulation for Entry of Final Judgment.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner